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SJC-12426

COMMONWEALTH vs. DELMORE D., a juvenile.<sup>1</sup>

August 6, 2018.

Juvenile Court, Jurisdiction. Jurisdiction, Juvenile Court. Practice, Civil, Moot case.

Based on an allegation that the juvenile robbed an individual of his cellular telephone at knifepoint, the juvenile was charged by complaint in the Juvenile Court with delinquency by reason of armed robbery and assault by means of a dangerous weapon. He moved to suppress an identification that one of the alleged victims made shortly after the incident, near the scene of the offense, when the juvenile was arrested. The arresting officer positioned the juvenile between three plainclothes police officers and asked the alleged victim whether he was able to make an identification. The alleged victim identified the juvenile by his clothing. A judge in the Juvenile Court ordered the identification suppressed on the ground that this was an improperly suggestive lineup.

The Commonwealth obtained leave to pursue an interlocutory appeal from the suppression ruling. A panel of the Appeals Court, in an unpublished decision, reversed, concluding that the identification procedure was a showup rather than a lineup, and that it was not conducted in an unnecessarily suggestive manner. Commonwealth v. Delmore D., 91 Mass. App. Ct. 1120 (2017). We granted the juvenile's application for further appellate review. On the Commonwealth's motion, we now dismiss its appeal as moot.

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<sup>1</sup> A pseudonym assigned by the Appeals Court.

1. The juvenile was born on April 30, 1997, and attained the age of twenty on April 30, 2017, a few days before the Appeals Court panel issued its decision. Accordingly, the complaints against him may not now be adjudicated in the Juvenile Court and must be dismissed. See G. L. c. 119, § 58. Because the Commonwealth's appeal involves an interlocutory issue in a case that has for all intents and purposes become moot, the juvenile no longer has a continuing stake in the outcome of this appeal, and the appeal also must be dismissed as moot.<sup>2</sup> See Blake v. Massachusetts Parole Bd., 369 Mass. 701, 703 (1976).

2. We decline the juvenile's invitation to decide the appeal notwithstanding its mootness. A challenge to this type of identification procedure may be capable of repetition, as the juvenile claims, but it will not necessarily evade appellate review. Although we recognize that the issue is significant and has constitutional implications, the most prudent course is to defer deciding the issue until we are presented with a case where there is a live controversy. See Lockhart v. Attorney Gen., 390 Mass. 780, 783-784 (1984) ("Where a moot issue . . . is not apt to evade review . . . we have declined to decide the issue"; also noting general "practice . . . of not unnecessarily deciding constitutional questions").

3. For these reasons, a rescript shall issue from this court stating that the Commonwealth's appeal from the November 3, 2015, order of the Juvenile Court judge allowing the juvenile's motion to suppress his identification is moot. We express no view as to whether the identification procedure employed in this case was constitutionally permissible and, if

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<sup>2</sup> The juvenile acknowledges that, because he has turned twenty years old, he cannot be adjudicated delinquent pursuant to G. L. c. 119, § 58, on the original complaint. He argues, however, that he continues to have a stake in the proceeding because, if the Juvenile Court charges are dismissed, the Commonwealth could recharge the juvenile and then seek a transfer hearing permitting prosecution in adult court. See Commonwealth v. Mogelinski, 473 Mass. 164, 171 & n.5 (2015), citing G. L. c. 119, § 72A. The argument is misplaced. The issue before us is limited to the Commonwealth's interlocutory appeal from the Juvenile Court judge's order allowing the juvenile's motion to suppress. The juvenile's argument that he might be recharged is speculative and insufficient to confer a stake in the outcome of this particular appeal.

so, how such a procedure is to be evaluated. That remains an open issue to be resolved in a case where the identification is a live issue. Nothing in our disposition should be read as an indorsement of the Appeals Court's decision on that point.

So ordered.

The case was submitted on briefs.

Colby M. Tilley, Assistant District Attorney, for the Commonwealth.

Brandon L. Campbell for the juvenile.